

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 395**

Introduced by DeKay, 40.

Read first time January 17, 2025

Committee:

- 1 A BILL FOR AN ACT relating to juveniles; to amend sections 28-1204.05 and
- 2 43-2,108.05, Revised Statutes Cumulative Supplement, 2024; to change
- 3 provisions relating to unlawful possession of a firearm by a
- 4 prohibited juvenile offender and sealed records; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1           **Section 1.** Section 28-1204.05, Revised Statutes Cumulative  
2 Supplement, 2024, is amended to read:

3           28-1204.05 (1) Except as provided in subsections (3) and (4) of this  
4 section, a person under the age of twenty-five years who knowingly  
5 possesses a firearm commits the offense of possession of a firearm by a  
6 prohibited juvenile offender if he or she has previously been adjudicated  
7 an offender in juvenile court for an act which would constitute a felony  
8 or an act which would constitute a misdemeanor crime of domestic  
9 violence. This subsection includes an offense for which a juvenile record  
10 has been sealed upon termination of probation.

11           (2) Possession of a firearm by a prohibited juvenile offender is a  
12 Class IV felony for a first offense and a Class IIIA felony for a second  
13 or subsequent offense.

14           (3) Subsection (1) of this section does not apply to the possession  
15 of firearms by members of the armed forces of the United States, active  
16 or reserve, National Guard of this state, or Reserve Officers Training  
17 Corps or peace officers or other duly authorized law enforcement officers  
18 when on duty or training.

19           (4)(a) Prior to reaching the age of twenty-five years, a person  
20 subject to the prohibition of subsection (1) of this section may file a  
21 petition for exemption from such prohibition and thereby have his or her  
22 right to possess a firearm reinstated. A petitioner who is younger than  
23 nineteen years of age shall petition the juvenile court in which he or  
24 she was adjudicated for the underlying offense. A petitioner who is  
25 nineteen years of age or older shall petition the district court in the  
26 county in which he or she resides.

27           (b) In determining whether to grant a petition filed under  
28 subdivision (4)(a) of this section, the court shall consider:

29           (i) The behavior of the person after the underlying adjudication;

30           (ii) The likelihood that the person will engage in further criminal  
31 activity; and

1 (iii) Any other information the court considers relevant.

2 (c) The court may grant a petition filed under subdivision (4)(a) of  
3 this section and issue an order exempting the person from the prohibition  
4 of subsection (1) of this section when in the opinion of the court the  
5 order will be in the best interests of the person and consistent with the  
6 public welfare.

7 (5) The fact that a person subject to the prohibition under  
8 subsection (1) of this section has reached the age of twenty-five or that  
9 a court has granted a petition under subdivision (4)(a) of this section  
10 shall not be construed to mean that such adjudication has been set aside.  
11 Nothing in this section shall be construed to authorize the setting aside  
12 of such an adjudication or conviction except as otherwise provided by  
13 law.

14 (6) For purposes of this section, misdemeanor crime of domestic  
15 violence has the same meaning as in section 28-1206.

16 **Sec. 2.** Section 43-2,108.05, Revised Statutes Cumulative Supplement,  
17 2024, is amended to read:

18 43-2,108.05 (1) If the court orders the record of a juvenile sealed,  
19 the court shall:

20 (a) Order that all records, including any information or other data  
21 concerning any proceedings relating to the offense, including the arrest,  
22 taking into custody, petition, complaint, indictment, information, trial,  
23 hearing, adjudication, correctional supervision, dismissal, or other  
24 disposition or sentence, be deemed never to have occurred;

25 (b) Send notice of the order to seal the record (i) if the record  
26 includes impoundment or prohibition to obtain a license or permit  
27 pursuant to section 43-287, to the Department of Motor Vehicles, (ii) if  
28 the juvenile whose record has been ordered sealed was a ward of the state  
29 at the time the proceeding was initiated or if the Department of Health  
30 and Human Services was a party in the proceeding, to such department, and  
31 (iii) to law enforcement agencies, county attorneys, and city attorneys

1 referenced in the court record;

2 (c) Order all notified under subdivision (1)(b) of this section to  
3 seal all records pertaining to the offense;

4 (d) If the case was transferred from district court to juvenile  
5 court or was transferred under section 43-282, send notice of the order  
6 to seal the record to the transferring court; and

7 (e) Explain to the juvenile using developmentally appropriate  
8 language what sealing the record means. The explanation shall be given  
9 verbally if the juvenile is present in the court at the time the court  
10 issues the sealing order and by written notice sent by regular mail to  
11 the juvenile's last-known address if the juvenile is not present in the  
12 court at the time the court issues the sealing order. If applicable, the  
13 explanation shall inform the juvenile that the juvenile is prohibited  
14 from possessing a firearm under section 28-1204.05. The sealing order  
15 shall include contact information for each government agency subject to  
16 the sealing order.

17 (2) The effect of having a record sealed is that thereafter no  
18 person is allowed to release any information concerning such record,  
19 except as provided by this section. After a record is sealed, the person  
20 whose record was sealed can respond to any public inquiry as if the  
21 offense resulting in such record never occurred. A government agency and  
22 any other public office or agency shall reply to any public inquiry that  
23 no information exists regarding a sealed record. Except as provided in  
24 subsection (3) of this section, an order to seal the record applies to  
25 every government agency and any other public office or agency that has a  
26 record relating to the offense, regardless of whether it receives notice  
27 of the hearing on the sealing of the record or a copy of the order. Upon  
28 the written request of a person whose record has been sealed and the  
29 presentation of a copy of such order, a government agency or any other  
30 public office or agency shall seal all records pertaining to the offense.

31 (3) A sealed record is accessible to the individual who is the

1 subject of the sealed record and any persons authorized by such  
2 individual, law enforcement officers, county attorneys, and city  
3 attorneys in the investigation, prosecution, and sentencing of crimes, to  
4 the sentencing judge in the sentencing of criminal defendants, to a judge  
5 making a determination whether to transfer a case to or from juvenile  
6 court, to any attorney representing the subject of the sealed record, and  
7 to the Inspector General of Nebraska Child Welfare pursuant to an  
8 investigation conducted under the Office of Inspector General of Nebraska  
9 Child Welfare Act. Inspection of records that have been ordered sealed  
10 under section 43-2,108.04 may be made by the following persons or for the  
11 following purposes:

12 (a) By the court or by any person allowed to inspect such records by  
13 an order of the court for good cause shown;

14 (b) By the court, city attorney, or county attorney for purposes of  
15 collection of any remaining parental support or obligation balances under  
16 section 43-290;

17 (c) By the Nebraska Probation System for purposes of juvenile intake  
18 services, for presentence and other probation investigations, and for the  
19 direct supervision of persons placed on probation and by the Department  
20 of Correctional Services, the Office of Juvenile Services, a juvenile  
21 assessment center, a criminal detention facility, a juvenile detention  
22 facility, or a staff secure juvenile facility, for an individual  
23 committed to it, placed with it, or under its care;

24 (d) By the Department of Health and Human Services for purposes of  
25 juvenile intake services, the preparation of case plans and reports, the  
26 preparation of evaluations, compliance with federal reporting  
27 requirements, or the supervision and protection of persons placed with  
28 the department or for licensing or certification purposes under sections  
29 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's  
30 Residential Facilities and Placing Licensure Act;

31 (e) By the individual who is the subject of the sealed record and by

1 persons authorized by such individual. The individual shall provide  
2 satisfactory verification of his or her identity;

3 (f) At the request of a party in a civil action that is based on a  
4 case that has a sealed record, as needed for the civil action. The party  
5 also may copy the sealed record as needed for the civil action. The  
6 sealed record shall be used solely in the civil action and is otherwise  
7 confidential and subject to this section;

8 (g) By persons engaged in bona fide research, with the permission of  
9 the court or the State Court Administrator, only if the research results  
10 in no disclosure of the person's identity and protects the  
11 confidentiality of the sealed record; ~~or~~

12 (h) By a law enforcement agency if the individual whose record has  
13 been sealed applies for employment with the law enforcement agency; ~~or~~

14 (i) By a law enforcement agency to determine if a person under the  
15 age of twenty-five years has been previously adjudicated for an act which  
16 would constitute a felony or a misdemeanor crime of domestic violence as  
17 defined in subsection (6) of section 28-1204.05 when such person applies  
18 for a permit under the Concealed Handgun Permit Act or a certificate to  
19 purchase, lease, rent, or transfer a handgun under section 69-2401, et  
20 seq.

21 (4) Nothing in this section prohibits the Department of Health and  
22 Human Services from releasing information from sealed records in the  
23 performance of its duties with respect to the supervision and protection  
24 of persons served by the department.

25 (5) In any application for employment, bonding, license, education,  
26 or other right or privilege, any appearance as a witness, or any other  
27 public inquiry, a person cannot be questioned with respect to any offense  
28 for which the record is sealed. If an inquiry is made in violation of  
29 this subsection, the person may respond as if the offense never occurred.  
30 Applications for employment shall contain specific language that states  
31 that the applicant is not obligated to disclose a sealed record.

1 Employers shall not ask if an applicant has had a record sealed. The  
2 Department of Labor shall develop a link on the department's website to  
3 inform employers that employers cannot ask if an applicant had a record  
4 sealed and that an application for employment shall contain specific  
5 language that states that the applicant is not obligated to disclose a  
6 sealed record.

7 (6) Any person who knowingly violates this section shall be guilty  
8 of a Class V misdemeanor.

9 **Sec. 3.** Original sections 28-1204.05 and 43-2,108.05, Revised  
10 Statutes Cumulative Supplement, 2024, are repealed.